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An act to add Chapter 21 (commencing with Section 9900) to Division 3 of the Business and Professions Code, and to amend Section 12940 of the Government Code, relating to network drivers, and making an appropriation therefor.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**SECTION 1.** The Legislature finds and declares all of the following:

(a) Transportation network company drivers and delivery network company drivers and couriers, collectively network drivers, are an important and growing part of California's economy.

(b) These industries have created a flexible new source of income for individuals in California, many of whom would otherwise face serious obstacles to participate in the labor market. However, the legislature believes that a new, modern system of worker protection is required to ensure that individuals have access to both economic security and economic opportunity.

(c) Under the California Supreme Court's holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, network drivers who currently work as independent contractors could be reclassified as employees.

(d) While the Labor Code would provide a range of protections for network drivers, employee classification of network drivers would mean losing the very flexibility that distinguishes driving from traditional full- or part-time employment.

(e) With this act, California has the historic opportunity to lead the nation in building a strong, flexible, and innovative set of protections for network drivers, while allowing them to work their own hours across multiple platforms and still be their own boss.

(f) This act introduces a minimum earnings standard, a new system of portable benefits, and an enduring model for worker representation that is tailored to the reality of network drivers' work.

(g) The modern and collaborative framework of this act brings into force a first-of-its-kind sectoral bargaining process that ensures a seat at the table and a strong voice for a workforce that is otherwise difficult to organize.

(h) California will become the first state in the country to bring a new approach to the new economy, combining a secure social safety net and robust worker advocacy with flexibility that continues California's place as the home of innovation.

SEC. 2. Chapter 21 (commencing with Section 9900) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 21. NETWORK DRIVERS

9900. (a) Notwithstanding any other law, including, but not limited to, Section 2750.3 of the Labor Code, transportation network company drivers and delivery network company couriers and drivers shall be classified as a new category of worker, called a network driver. The rights and obligations of network drivers of a transportation network company or delivery network company shall be governed exclusively by this chapter provided the company meets all of the following conditions:

(1) The transportation network company or the delivery network company contracting with the network driver does not prescribe specific hours during which a network driver must be logged into the transportation network company or the delivery network company's digital network.

(2) The transportation network company or the delivery network company contracting with the network driver imposes no restrictions on the network driver's



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ability to utilize a website, digital network, or software application of other transportation network companies or delivery network companies, or to be hired or contract with other entities.

(3) The transportation network company or the delivery network company contracting with the network driver does not restrict the network driver from engaging in any other occupation or business.

(4) The written agreement between the transportation network company or the delivery network company and the network driver expressly guarantees a weekly net earnings floor, as set forth in Section 9906.

(b) For purposes of this chapter the following definitions apply:

(1) "Network driver" means any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers and any person who uses a vehicle, bicycle, or scooter in connection with a delivery network company's online-enabled application or platform to connect with individuals ordering food delivery from restaurants.

(2) "Transportation network company" shall have the same meaning as the definition contained in subdivision (c) of Section 5431 of the Public Utilities Code.

(3) "Delivery network company" shall have the same meaning as the definition contained in paragraph (1) of subdivision (b) of Section 6041.5 of the Revenue and Taxation Code.

(c) Notwithstanding any other law, including the Labor Code, the Unemployment Insurance Code, the Civil Code, and any order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, this chapter shall, consistent with subdivision (a), exclusively govern the worker status of network drivers, and these drivers shall not be classified as employees or agents of a transportation network company or a delivery network company.

9901. For purposes of this chapter, the following definitions shall apply:

(a) "Board" means the California Network Drivers Benefits Fund Board.

(b) "Fund" means the California Network Drivers Benefits Fund.

9902. (a) There is hereby created within the state government the California Network Drivers Benefits Fund Board, which shall consist of five members, as follows:

(1) Two members representing drivers and appointed by the Governor.

(2) Two members representing qualifying transportation network companies registered under this chapter and appointed by the Governor.

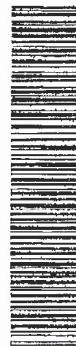
(3) One public member appointed by the Governor from a list of three candidates, mutually agreed upon by the other four board members.

(b) The board shall be empowered to do all of the following:

(1) Facilitate as provided in this chapter the provision of workers' compensation insurance coverage or occupational and accident insurance, or the benefits due under the occupational accident insurance or workers' compensation law in the event the fund self-insures.

(2) Facilitate the provision of other benefits for network drivers.

(3) Assess and collect those fees authorized by this chapter from transportation network companies and delivery network companies necessary to effectuate this chapter and to administer the fund.



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(4) Make and enter into contracts necessary for the administration of the, and provide for the payment of those contracts and other costs of administering the fund.

(5) Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation for deposit in any or all accounts in the fund.

(6) Appoint an executive director, who shall not be a member of the board and who shall serve at the pleasure of the board. The executive director shall administer the fund.

(7) Employ staff.

(8) Carry out the duties and obligations of the fund pursuant to this chapter and exercise any and all other powers as appropriate for the effectuation of the purposes, objectives, and provisions of this chapter pertaining to the fund.

9903. (a) There is hereby established in the Treasury the California Network Drivers Benefits Fund. The fund shall be administered by the board for the purpose of securing occupational accident insurance or workers' compensation insurance and other benefits for drivers, and promoting the safety and well-being of drivers who contract with transportation network companies or delivery network companies. Any benefits provided from the fund to a network driver shall be considered amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under Section 11580 of the Insurance Code.

(b) The board shall segregate moneys received by the fund into two accounts, which shall be identified as the benefits account and the administrative account. Notwithstanding Section 13340 of the Government Code, moneys in both accounts in the fund are hereby continuously appropriated, without regard to fiscal years, to the board for the purposes of this chapter and all interest received or earned on moneys deposited into the fund shall be credited to and become a part of the fund.

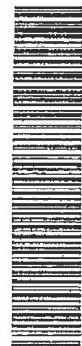
(c) On a monthly basis, each transportation network company and each delivery network company shall, with respect to each network driver of the company, collect and remit payment to the Benefits fund a charge set by the board, but not to exceed 4 percent of state or local minimum wage, as described in subdivision (d) of Section 9906, to pay for both of the following:

(1) The costs of occupational accident insurance or workers' compensation insurance coverage purchased pursuant to this chapter, or of any benefits due under Division 4 (commencing with Section 3200) of the Labor Code in the event the board elects to self-insure, or any liabilities it may incur.

(2) The costs of other benefits or insurance products as the board determines to be necessary to promote the safety and well-being of network drivers who contract with transportation network companies or delivery network companies.

(d) On a monthly basis, each transportation network company or each delivery network company shall collect and remit payment to the administrative account a charge set by the board, but not to exceed 0.2 percent of the 4-percent fee to fund the administrative fund pursuant to subdivision (c), at least one-half of which shall be set aside for the Driver Advocate Program established in Section 9907.

(e) Beginning 90 days from the effective date of this chapter, and then annually thereafter, the executive director of the fund shall ascertain and report to the board a reasonable estimate of the total funding necessary to carry on its operations.



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(f) The Administrative Account shall be used solely for the purpose of paying operating costs associated with administering the trust and as required by this title, including, but not limited to, board operations, program administrator and investment expenses, enforcement and compliance costs, and the costs and grants of the Driver Advocate Program, as described in Section 9907.

9904. (a) By ___, 2020, the board shall secure occupational accident insurance or workers' compensation coverage for all network drivers by either:

(1) Self-insuring in accordance with the rules of Division 4 (commencing with Section 3200) of the Labor Code and the rules adopted by the board pursuant to that section.

(2) Purchasing occupational accident insurance or workers' compensation insurance covering, on a blanket basis, all network drivers.

(b) Within ___ days of the effective date of this chapter, the board shall, in consultation with transportation network companies and delivery network companies, adopt a protocol consistent with state and federal laws with respect to transfer and maintenance of data sharing concerning confidential or personal information and other documentation required to carry out its duties.

(c) (1) A transportation network company and delivery network company shall, on a monthly basis, provide the fund or designated third-party data collection firm with information concerning the identities of all network drivers contracted with, the number of qualifying hours and qualifying miles driven by each network driver, and the net weekly earnings for each driver.

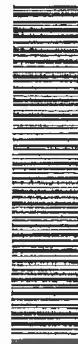
(2) This information shall be held securely, and the fund or third party shall take any necessary steps to protect against unauthorized access to or disclosure of the information.

(3) This information shall be used solely to provide benefits and shall not be made public by the fund or designated third party and is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code)

(d) The board may adopt any additional policies and procedures required to administer the fund.

(e) A person who unlawfully accesses or discloses the information submitted by a transportation network company and delivery network company under subdivision (c), or uses the information for a purpose other than that provided for in paragraph (3) of subdivision (c) shall be guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years and a fine not exceeding ten thousand dollars (\$10,000), or a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding five thousand dollars (\$5,000), or by both that fine and imprisonment.

9905. A transportation network company and delivery network company and network driver subject to an agreement satisfying all of the conditions of Section 9906 shall be deemed to have elected to come under the compensation provisions of Division 4 (commencing with Section 3200) of the Labor Code pursuant to Section 4150 of the Labor Code, without any further election or acceptance and without the ability to withdraw or decline such election or acceptance. The Labor Code applies for the sole purpose of purchasing insurance by the fund and shall not affect the status of a network driver as not an employee or agent for all other purposes. Participation in the fund by



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a transportation network company or delivery network company shall constitute insuring against liability for compensation for purposes of subdivision (a) of Section 4151 of the Labor Code and paragraph (2) of subdivision (b) of Section 5433 of the Public Utilities Code.

9906. (a) The written agreement between the transportation network company or delivery network company and the network driver shall expressly guarantee a weekly net earnings floor for the network driver, as set forth in this section.

(b) For the purposes of this section the following definitions apply:

(1) "Weekly net earnings" means all earnings received by a network driver in a set weekly period, provided that amount meets both of the following requirements:

(A) The amount does not include gratuities, tolls, cleaning fees, third-party fees, or other rider pass-throughs.

(B) The amount may include incentives or other bonuses.

(2) "Weekly net earnings floor" means weekly net earnings of at least both of the following:

(A) An average hourly compensation of not less than 1.27 times the state minimum wage, or 1.27 times the local minimum wage if the trip originates within a county or municipality with a minimum wage that is higher than the state minimum wage, for all qualified time.

(B) An average per-mile compensation of thirty cents (\$0.30) per mile for all qualified miles completed in a vehicle. There is no per-mile compensation for delivery of food by bicycle.

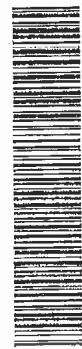
(3) "Qualified time" means all time spent from the moment a network driver accepts a ride request on the transportation network company or delivery network company's online-enabled application or platform until the network driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later. Payment for time enroute is calculated using the average ratio of time to pickup and time on trip in that market.

(4) "Peak hours" means hours between 11 a.m. to 2 p.m. and 6 p.m. to 9 p.m.

(5) "Qualified miles" means all miles driven from the moment a network driver accepts a ride request on the transportation network company or delivery network company's online-enabled application or platform until the network driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later. Miles enroute are calculated using the average ratio of distance to pickup and distance on trip in that market.

(c) For each period not to exceed one week, a transportation network company or delivery network company shall compare a network driver's weekly net earnings based on qualified miles and qualified time received by each network driver, against the weekly net earnings floor for that network driver. In the event the network driver's weekly net earnings are less than the weekly net earnings floor, the transportation network company or delivery network company shall include an additional sum in the network driver's pay for the period accounting for the difference.

(d) For the purposes of this section, the applicable minimum wage shall be based on the county or municipality in which a passenger is picked up or a food delivery is picked up from a restaurant, which will apply to all qualified time for that ride or delivery.



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(e) The minimum earnings guarantee shall only apply during peak hours for network drivers delivering food with a delivery network company.

9907. (a) There is established the Driver Advocate Program to ensure that network drivers are represented before transportation network companies and delivery network companies on issues of safety and worker protections.

(b) The board shall adopt policies and procedures for the administration of the Driver Advocate Program.

(c) The Driver Advocate Program shall receive grants from the administrative fund, which may then be provided to an entity engaged in driver advocacy or representation to offset and defray costs of representing and advocating for drivers safety and conditions of work.

(d) The board, under the Driver Advocate Program, shall establish procedures and criteria whereby a driver advocate organization may apply for and receive grants from the program.

(e) No provision of this section shall apply to drivers who are employees under subsection (3) of Section 152 of Title 29 of the United States Code, as it read on January 1, 2019.

9908. This chapter does not change the status of network drivers as employees or independent contractors or classify network drivers as either private or public employees.

9909. As used in this chapter, the following definitions have the following meanings:

(a) "Certified network driver advocacy organization" means an organization certified by the Public Employment Relations Board as the representative of network drivers in an appropriate unit after a proceeding under subdivision (e).

(b) "Network driver advocacy organization" means an organization that meets the following requirements:

(1) Is registered and in good standing with the Secretary of State as a nonprofit corporation.

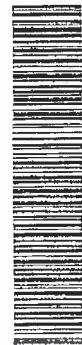
(2) Has adopted written organizational bylaws that state that network drivers have the right to be members of the organization and to participate in selecting the leadership of the organization.

(3) Has demonstrated experience in representing network drivers or other professionals in reaching agreements with employers for at least five years prior to be certified.

(4) Submits a plan stating how it intends to successfully advocate for network drivers with transportation network companies or delivery network companies.

(5) Has submitted statements of interest obtained by the organization from network drivers.

(c) "Public Employment Relations Board" means the Public Employment Relations Board established pursuant to Section 3541 of the Government Code. The powers and duties of the board described in Sections 3514.5, 3520.5, and 3541.3 of the Government Code, and the respective implementing regulations, shall apply, as appropriate, to this article to the extent those procedures are not inconsistent with the procedures authorized or specified in this article. If a provision of this article is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), or Chapter 10.7



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(commencing with Section 3540) of Division 4 of Title 1 of the Government Code, it shall be interpreted and applied in accordance with the regulations and judicial interpretations of the provision in those statutes. For purposes of this article, any references in Sections 3514.5, 3520.5, and 3541.3 of the Government Code to "employee" or "employees" shall be deemed to refer to a "network driver" as defined in paragraph (1) of subdivision (b) of Section 9900, any references to an "employee organization" shall be deemed to refer to a "network driver advocacy organization" as defined in subdivision (b), any references to "exclusive representative" shall be deemed to refer to "certified network driver advocacy organization" as defined in subdivision (a), and any references to "employer" shall be deemed to refer solely to transportation network companies or delivery network companies.

9910. The state action antitrust exemption to the application of federal and state antitrust laws shall apply to the activities of network drivers and their representatives authorized under this chapter.

9911. Network drivers have the right to form, join, and participate in the activities of network driver advocacy organizations of their own choosing. Network drivers also have the right to refuse to join or participate in the activities of network driver advocacy organizations. This article does not change the rights of network drivers to represent themselves individually in their relations with transportation network companies or delivery network companies, or others, or their rights to speak to and petition the government with respect to any topic.

9912. (a) There shall be no more than one certified representative for network drivers of transportation network companies, and no more than one certified representative for network drivers of delivery network companies for purposes of this article at any time. There shall be one appropriate bargaining unit of transportation network company network drivers and one appropriate bargaining unit of delivery network company network drivers.

(b) An appropriate unit of network drivers, as described in subdivision (a), may designate, in accordance with this article, the network driver advocacy organization, if any, that shall be its representative for purposes of this article. The Public Employee Relations Board shall, pursuant to the procedures in this section, certify a network driver advocacy organization designated by an appropriate unit of network drivers as the representative of those network drivers for purposes of this article.

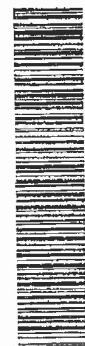
(c) For purposes of this section, the Public Employment Relations Board shall determine if an entity seeking to be certified as a certified network driver advocacy organization is a network driver advocacy organization within the meaning of subdivision (b) of Section 9909 as follows:

(1) The general counsel of the Public Employee Relations Board shall have the authority to determine if an entity is a network driver advocacy organization within the meaning of subdivision (b) of Section 9909 upon application by that entity.

(2) The application by an entity seeking to be certified as a certified network driver advocacy organization shall include all of the following:

(A) All necessary information to demonstrate compliance with the requirements of subdivision (b) of Section 9909.

(B) Proof of a 10-percent showing of interest designating the driver advocacy organization to act as the statewide representative of the network drivers. For purposes of the showing of interest, "network driver" shall include any individual who has been



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a "network driver" within 90 days of the date the petition is submitted to the board. Proof of support may consist of, but does not require, any one of the following:

- (i) Proof of contribution payments.
- (ii) Contributions deduction authorization forms.
- (iii) Membership applications.
- (iv) Authorization cards signed by network drivers.

(v) Petitions signed by network drivers, provided the purpose of the petition is clearly stated on each page.

(C) Any other information the general counsel of the board deems necessary.

(3) The Public Employee Relations Board, or a neutral third party designated by the Public Employee Relations Board to act on a request for certification, shall consider a document evidencing a network driver's support, or lack of support, for a network driver advocacy organization valid if it was signed by the network driver within two years of the date it is submitted to the board. For purposes of showing proof of support by a network driver for a network driver advocacy organization, the Public Employee Relations Board shall accept signatures that meet the requirements of the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code).

(d) The Public Employee Relations Board shall develop a process for resolving competing petitions if another entity seeks to be certified as a certified network driver advocacy organization and demonstrates a 10-percent showing of interest in the same manner as described in subdivision (c).

(e) The Public Employee Relations Board shall determine whether an entity seeking to be certified as the certified network driver advocacy organization for either network drivers of transportation network companies or network drivers of delivery network companies meets the requirements of subdivision (c). If the Public Employee Relations Board determines that the requirement of subdivision (c) have been met, the entity shall be certified as the certified driver advocacy organization for those drivers.

(f) Upon certification of an entity as a certified network driver advocacy organization, a transportation network company or delivery network company shall, within 30 days of the certification, establish an anonymized process for the certified network driver advocacy organization to communicate with network drivers regarding membership in the certified network driver advocacy organization. Thereafter, drivers may voluntarily provide their contact information to the certified network driver advocacy organization and may opt-in for membership in the certified network driver advocacy organization.

(g) A certified network driver advocacy organization shall represent each network driver in the represented unit fairly with respect to matters within the scope of the certified network driver advocacy organization's role as representative of the bargaining unit for purposes of this article, without discrimination and without regard to whether the network driver is a member of the network driver advocacy organization.

9913. The scope of representation shall include, but not be limited to, earnings and benefits of network drivers, and shall not include the status of network drivers as employees or independent contractors.

9914. (a) Transportation network companies and delivery network companies shall meet and confer in good faith regarding all matters within the scope of representation with representatives of a network driver advocacy organization.



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(b) Representatives of transportation network companies shall collectively meet and confer with representatives of the network driver advocacy organization as part of a multicompany meet and confer committee.

(c) Representatives of delivery network companies shall collectively meet and confer with representatives of the network driver advocacy organization as part of a multicompany meet and confer committee.

(d) As used in this section, "meet and confer in good faith" means that transportation network companies, delivery network companies, and representatives of the certified network driver advocacy organization shall have the mutual obligation to meet and confer at least quarterly, and continue for a reasonable period of time, in order to freely exchange information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.

(e) A transportation network company or a delivery network company whose drivers are represented by a certified network driver advocacy organization shall, to the extent feasible, provide advance notice to the certified network driver advocacy organization regarding any changes to company policies that adversely impact network driver pay or access to work. With respect to noneconomic issues, the transportation network company or delivery network company shall, to the extent feasible, provide advance notice of material changes to the platform application or network driver policies.

9915. (a) If an agreement is reached between transportation network companies, delivery network companies, and the certified network driver advocacy organization, they shall jointly prepare a written memorandum of understanding. There shall be one memorandum of understanding covering transportation network companies and their network drivers, and one memorandum of understanding covering delivery network companies and their network drivers.

(b) The memorandum of understanding shall apply to all network drivers within the scope of the appropriate statewide bargaining unit as described in subdivision (a) of Section 9912.

(c) (1) If any provision of the memorandum of understanding requires the expenditure of funds by the state, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of existing law, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

(2) If the Legislature does not approve or fully fund any provision of the memorandum of understanding that requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding.

(3) This section does not prevent the parties from agreeing and effecting those provisions of the memorandum of understanding that have received legislative approval or those provisions that do not require legislative action.

(d) An agreement pursuant to this section may provide for binding arbitration of grievances concerning the interpretation, application, or violation of the agreement.

9916. A certified network driver advocacy organization may collect voluntary contributions from network drivers on an opt-in only basis to fund the activities of the organization.



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9917. (a) It shall be unlawful for a transportation network company or a delivery network company to discriminate or retaliate against a network driver for exercising their right to form, join, and participate in the activities of a network driver advocacy organization of their own choosing. A transportation network company or a delivery network company shall not deter or discourage drivers from becoming or remaining members of a network driver advocacy organization, or from authorizing contributions or dues to a network driver advocacy organization.

(b) It shall be unlawful for a network driver advocacy organization or a certified network driver advocacy organization to impose or threaten to impose reprisals on network drivers, to discriminate or threaten to discriminate against network drivers, or otherwise interfere with, restrain, or coerce network drivers because of their rights guaranteed by this article.

(c) The board shall establish an expedited process for receiving and resolving complaints for alleged violations of subdivisions (a) and (b). This process shall allow complaints to be resolved via the submission of briefing and documentary evidence without the need for a formal hearing where permissible under law.

9918. (a) If a memorandum of understanding has expired, and the transportation network companies or the delivery network companies and the certified network driver advocacy organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations as described in subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding.

(b) If after a reasonable period of time the parties fail to reach agreement, the parties may agree to submit unresolved issues to the California State Mediation and Conciliation Service established within the Public Employment Relations Board for mediation, or either party may declare that an impasse has been reached and request the board to appoint a mediator from the California State Mediation and Conciliation Service. A memorandum of understanding reached by means of mediation is subject to appropriation by the Legislature and necessary statutory revisions.

(c) If after the mediation procedure has been exhausted no resolution has been reached by the parties, a transportation network company or a delivery network company may declare an impasse and implement any or all of its last, best, and final offer. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change, and does not waive rights that the certified network driver advocacy organization has under this chapter.

9919. A network driver, a network driver advocacy organization, or a certified network driver advocacy organization representing network drivers shall not participate in, or encourage participation in, a strike against a transportation network company or delivery network company.

9920. Section 2750.3 of the Labor Code and the holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 shall not apply to participating drivers, as defined in subdivision (a) of Section 5431 of the Public Utilities Code, and instead, the employment relationship between a participating driver and transportation network company shall be governed by the test adopted by the California Supreme Court in the case of *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 for any time periods prior to the effective date of this chapter.



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SEC. 3. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.



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(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.



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(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

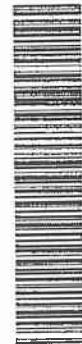
(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to harass, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all



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reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. "Employer" also includes a transportation network company defined under Article 7 (commencing with Section 5430) of Chapter 8 of Division 2 of the Public Utilities Code with respect to drivers with whom it contracts to provide services using the transport network company's digital network, and any delivery network company defined under Section 6041.5 of the Revenue and Taxation Code with respect to drivers and couriers with whom it contracts to provide services using the delivery network company's digital network. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(l) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or



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observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision (u) of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Section 9904 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public



93655

officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This act balances the need of a regulatory board to obtain information to accurately calculate the employment status of network drivers with the harm caused by public disclosure of that information, which includes harm to the network drivers by revealing personally identifiable information regarding those drivers, including personal financial information.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Network drivers; employee status.

Existing law provides for the licensure and regulation of various vocations and professions by regulatory boards established by the state, including, among others, contractors, medical practitioners, and cosmetologists.

This bill would establish the California Network Drivers Benefits Fund Board (board), as specified, to, among other things, facilitate the provision of workers' compensation insurance, minimum pay requirements, and other insurance benefits for network drivers who drive their vehicles for a transportation network company or delivery network company, as those terms are defined, pursuant to the company's online-enabled application platform. The bill would authorize the board to collect a specified fee from companies to fund its operations and would create the California Network Drivers Benefits Fund in the State Treasury, which would be continuously appropriated to fund the ongoing operations of the board. The bill would require the board to collect information concerning the identities of all network drivers and the number of qualifying hours worked on a monthly basis for use in managing driver benefits provided by the fund. The bill would provide that this information is exempt from disclosure under the California Public Records Act.

The bill would require that a subject company enter into a written agreement with the network drivers it works with to provide, among other things, minimum earnings compensation for the drivers. The bill would authorize network drivers to form or join a bargaining unit to represent them in negotiations for compensation and benefits, as specified. The bill would prohibit network drivers from striking. The bill would provide that violations of certain of its provisions is a crime. By creating a new crime, this bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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This bill would provide **that no** reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.



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